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IX

THE MADRAS BORSTAL BILL.

*The hon. Khan Bahadur MUHAMMAD USMAN SAHIB Bahadur:—"Mr. President, Sir, I beg to introduce the Madras Borstal Bill and move that it be read in Council. The objects of this Bill are clearly described in the preamble and in the Statement of Objects and Reasons. Here in this Bill, we recognize that it is the duty of the State to reform the adolescent offenders by bringing into existence institutions where they will receive some kind of industrial training or other, and where they will be brought under some kind of reformatory influence. The Children's Act of 1920 provides for children under 14 years of age and for young persons between 14 and 16 years to be brought to those institutions where they can be given some kind of industrial training and where they are placed under some reformatory influence. But the Madras Borstal Bill takes cognizance of persons between the ages of 16 and 21. The Indian Jails Committee say with regard to this system as follows:

'The increasing amount of freedom enjoyed, the gradual weakening of home restraints and the development of the sexual instinct combine to make this the most critical period of life, when the mind is specially susceptible to fresh impressions and when it is peculiarly important to prevent habits of immorality and crime from being formed.'

"Mr. McKenna in introducing in Parliament in 1914 the Criminal Justice Administration Bill, which corresponds to our Madras Borstal Bill, which is named after the city of Borstal in England, where such institutions were brought into existence for the first time, said:

'Our object is to provide in the Borstal institution a place where the offender will not be imprisoned but will only be deprived of his liberty to that degree which is necessary to ensure discipline, where he will live under discipline affecting alike his body, his mind and his character and where he will be taught an industry. It is not a prison. It is or it should be far more like a school under severe discipline with a strict industrial training.'

"He further said:

'We do not intend the Borstal institutions to be anything like a prison and as we develop in the management of the Borstal institutions, I can assure the House that they will be more and more removed from any thing in the nature of a prison and become more and more purely reformative and training institutions.'

"We have got a school at Tanjore called the Borstal school, where adolescent offenders are given some kind of general education, where they are taught drill and gymnastics and where they are also trained in some kind of handicraft. In 1923, we found that in this institution there were 778 inmates out of whom 289 were since discharged and 215 were placed under the control of probation officers. Of these 215, we find that 178 are reported to be doing well, doing some kind of definite work and honestly earning their livelihood. We have no information about 31 persons. Six have reverted to crime. From this, hon. Members will see that out of 215 persons discharged from this institution only six have relapsed into criminal habits. Our experience of Tanjore school shows that there are certain defects in the system. First of all, we find that by placing a young offender in a Borstal school for a short term of imprisonment, like six or nine months, he gets no benefit from the training given to him and from the moral influences under which he is brought during that period. Therefore, power is taken under this Act to send into our Borstal schools young offenders so that they may be kept there for a minimum period of three years and up to a maximum period of five years. It is also one of the principles recognized

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throughout the world that no adolescent offender should be kept in a Borstal school beyond the period which is absolutely essential. We find that at the present moment, under the ordinary law of the land, this is not provided for. Therefore, under sections 15 to 19 of this Bill power is taken so that even people who are discharged from these institutions may be kept under the vigilance and care of the Borstal Association. The corner stone of this Bill lies in the after care of the inmates that is being taken by voluntary associations like the discharged prisoners' aid societies, the social service leagues and Borstal associations. Here we have got a splendid opportunity for non-official co-operation which is absolutely essential, where workers who are enthusiastic in giving a helping hand to their unfortunate brethren can do all they can in order to assist them when they are set at liberty. Sir, when this Bill is passed into law and when Borstal institutions are brought into existence, they will exert the same influence as institutes of preventive medicine do in the realm of medicine. I therefore have great pleasure in moving that this Bill be read in this Council."

The hon. Mr. T. E. Moir :—"I second it."

* Rao Bahadur C. V. S. Narasimha Raju :—"Mr. President, I am glad that this Bill has been introduced and I also agree with the general principles of the Bill. But I wish to point out one or two things for consideration. It has been said that the reformatory schools are doing good work in the case of boys below 16 years of age, but there may be cases where boys admitted into the reformatory schools by the time they reach the 16th year may not be in a position to go back into society and do any useful work unless a further period of training in Borstal schools is provided for. I do not think there is any provision in the Bill for any such cases. The boys should be brought before the authorities in order to send them to the Borstal school for a further period of five years or less. In clause 10 power is given to the Inspector-General of Prisons that in the case of boys between 16 and 21 already convicted he may send them to the Borstal school on his own initiative. I am not able to agree to the principle that an executive officer should select the boys and send them to the Borstal school. My suggestion is that even in their cases he may send them for examination by the magistracy who with the new powers under this Act will decide whether they should be committed to the Borstal school.

"Even here according to section 11, the Magistrate has to determine the age of the boy and the period for which he has to be committed. These are matters that ought to be exercised after admission of due evidence and I do not think it is the idea of the Government that these too are to be settled by the Inspector-General of Prisons. The same clause provides that even in the case of boys that are punished after the passing of this Act the Inspector-General can send them. I cannot agree with the Government in case of boys committed after the passing of this Bill into an Act. It is not at all desirable that the executive should be invested with such powers. I presume that in all those cases the question whether the convicted person has to be sent to the Borstal school or to an ordinary prison should be examined by the convicting magistrate and once that question is settled, I cannot understand how the Inspector-General could be invested with further powers. My impression is that if, after some acquaintance with the character of the person

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punished, the Inspector-General comes to the conclusion that it is a fit case for sending the boy to the Borstal school he may bring the matter to the magistracy and the magistracy shall be empowered to re-examine the question. But I cannot at all agree with the Government in their idea of vesting these powers in the Inspector-General, he being solely an executive officer.

"In clause 15, the visiting committee is invested with the power of saying that a person after a certain period of stay in the institute shall be allowed to work under a society or under a private person. As I understand the clause I think it is left to the discretion of the Inspector-General to select the society or the private person who is to take charge of him during the remaining period. I am not able to agree that the discretion must be left to the Inspector-General of Prisons. I presume that there will be a sufficient element of non-official representation in the visiting committee and it must be these committees that should be given the power of selecting the societies or persons who would take charge of the offender. Even here I think it is necessary that certain rules shall be prescribed as to the religious teaching, etc., to the adolescents. My only apprehension is that these boys just at a tender age might be placed in the hands of persons of a different religious persuasion and it is not desirable that the State should commit them in that manner, without the consent of the guardians. I think it is necessary that sufficient provision should be made either by rule-making power or otherwise as to the character of these societies and the persons. Or, a list of these societies and persons may even be placed on the table of this House before Government finally adopt the list. I must say that to leave the settlement of the whole question into the hands of the Inspector-General of Prisons is a most objectionable feature. These are the remarks that I wish to offer on the provisions of this Bill at this stage."

*Mr. R. Srinivasa Ayyangar:—"I welcome this Bill and I certainly appreciate the spirit that underlies this Bill. But if I stand now it is more with a view to offer one or two criticisms on some provisions of the Bill.

"While section 562 of the Criminal Procedure Code deals with first offenders who are not under 22 years of age, this Bill deals with adolescent offenders of not less than 16 years and not more than 21 years of age. So far as they are concerned a sort of protection is sought to be given to them. I should like to deal with only some provisions, sections 6, 8, 10 and 15. I do not think I can usefully add to what has fallen from the lips of my hon. Friend Mr. Narasimha Raju who deprecated the tendency to vest extraordinary powers in one officer, to wit, the Inspector-General, with respect to matters contained in clauses 10 and 15 of the Bill. I entirely accept the position taken by him.

"Coming to clause 6 of the Bill I cannot understand why the High Court should be divested of its revisional jurisdiction. The section reads thus:

'The powers conferred on courts by this Act shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, (d) a Subdivisional Magistrate, (e) a salaried Presidency Magistrate and (f) any Magistrate of the first or second class specially empowered by the Local Government in that behalf; and may be exercised by such courts whether the case comes before them originally or on appeal.'

"This appears to me to be taking away the revisional powers of the High Court. If my recollection serves me aright, so far as first offenders

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are concerned a similar power is made to vest in the High Court in its revisional jurisdiction. There is no reason why a corresponding section has not been made and why such a serious attempt is made to deprive the High Court of that power. That is a matter which I hope the hon. the Home Member will see his way to consider.

" Again, as to clause 8 of the Bill, I am inclined to think that the minimum of three years is a little too high. I hope he will see his way to reduce the term to, say, two years or one year. With regard to the maximum the limit of five years fixed must also be reduced and I hope the hon. the Home Member will remember these facts also.

" Barring these criticisms, I do not think that the Bill itself can be open to objection and before resuming my seat I would once more request the hon. the Home Member to concentrate his attention on the first point I mentioned, viz., of allowing the High Court to pass similar orders when cases are put before them in the exercise of their revisional jurisdiction I take it that that is only an omission and I do not attribute any intention for it on the part of the framers of the measure."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" The object of the Bill is admittedly to prevent adolescents from mixing with ordinary prisoners. I am afraid, Sir, that the provisions of section 5 of the Bill are not calculated to achieve that object. Clause 4 contains ample provisions for the making of rules and to make the Bill self-contained. Because it provides for ' (*a*) the control and management of the Borstal school established under the Act, (*b*) the appointment, powers and duties of officials in such schools, (*c*) the constitution, powers and duties of visiting committees, (*d*) the classification, treatment, maintenance, education, industrial training and control of the inmates, (*e*) the temporary detention of adolescent offenders until arrangements can be made for sending them to Borstal schools.' Clause 5 of the Bill states :

' Subject to any alterations . . . the rules framed thereunder shall apply in the case of every Borstal school established under this Act as if it were a prison and the inmates prisoners.'

" I think it is much better to make the provisions of clause 4 as self-contained as possible and to leave off clause 5 altogether to avoid confusion that there is any connexion between the inmates of the Borstal school and the ordinary jails. That is one observation.

" The second is about clause 14. It gives discretion to the Local Government to ' commute the unexpired residue of the term of detention to such term of imprisonment . . .' If matters stood there, I will have no complaint because where the inmates of the school are sent to ordinary jails it would be the Local Government that exercises the powers. But under sub-section (2) ' the Local Government may . . . delegate the power conferred by sub-section (1) to the Inspector-General or any District Magistrate '. That portion may as well be omitted. The only other provision to which I would draw attention is the one under which persons are released under licence to any society or private person. This is likely to lead to great difficulties. There are proselytizing agencies and the question of religion is likely to come up. Much greater care is required in a country like India and it is much better that due

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inquiries are made, if possible, by magistrates as to the religion, surroundings, etc., and their connected circumstances before he is actually made over to the person.

" These are some observations which I have made. Generally, I welcome this necessary piece of legislation which has long been overdue."

Diwan Bahadur M. KRISHNAN NAYAR :—" I am rather inclined to think that this question had better be put to the House. It appears to be a thoroughly non-controversial measure excepting perhaps as to details which have been referred to by my hon. Friend Mr. Narasimha Raju and another hon. Member. These details could very well be adjusted in the Select Committee stage and I do not think that any further purpose would be served by discussing at this stage any more. I only throw out this suggestion and I am entirely in the hands of the House."

Mr. P. SIVA RAO :—" My hon. Friend from Malabar says that this is thoroughly a non-controversial measure."

Diwan Bahadur M. KRISHNAN NAYAR :—" Except with reference to details, I added."

Mr. P. SIVA RAO :—"Yes, he will see for himself whether what I am going to touch upon is of a detailed nature or it is a vital matter. I am referring to clause 8. I approve of the principle that an adolescent should suffer imprisonment contemplated under that section if it is for the same term or period as he would be committed to if he was convicted by a court. This is to say if an adolescent offender would be committed to, say, three or four months only and if only that period is considered a suitable term, I do not see the reason why he should be committed to ' a term which shall not be less than three years under this section.' That is a matter I object to. It should not be strictly limited to three years and the section should be accordingly revised. Even if he is sentenced to a Borstal school, the court that so sentences should have the power of committing him only to such term of imprisonment as otherwise it would be fit to impose on him. Now, with reference to the remarks made by my hon. Friend from Malabar, I request him to see if this is not a matter of vital importance and one that ought to be adverted to at this stage, or if it is only a small detail that could be touched on at the Select Committee stage."

* Mr. J. A. SALDANHA :—" We have got certain remarks to offer with regard to the fundamental principles of the Bill. The Select Committee ought to know our views."

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* The hon. the PRESIDENT :—" It is open to the hon. Member to oppose the reference to the Select Committee on any ground that he pleases."

* The hon. Sir C. P. RAMASWAMI AYYAR :—" May I say, Sir, there was an idea—I take it you have been apprised of it officially—of taking up official business to-morrow. In such a case, we may go on with this Bill to-morrow for 15 minutes and let the hon. Members have their say."

* The hon. the PRESIDENT :—" I hope hon. Members are at one with the hon. the Law Member in continuing the discussion for only 15 minutes to-morrow, because what I understood was that, if to-morrow was converted into an official day, the Andhra University Bill would be taken up."

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* The hon. Khan Bahadur MUHAMMAD USMAN SAHIB Bahadur :—" We shall continue this for 15 minutes to-morrow."

* The hon. Sir C. P. RAMASWAMI AYYAR :—" Surely, Sir. As a matter of fact, there are only three or four items of official business to-morrow ; the most controversial of them undoubtedly would be the Andhra University Bill. There are some amendments to Standing Orders which would not take more than 10 minutes. The Borstal Bill will not take more than half an hour at the most, and the Village Officers' Bill is for introduction only. So I confidently hope that in an hour all this business will be over and the rest of the day might be devoted to the Andhra University Bill and Supplementary demands."

* The hon. the PRESIDENT :—" I associate myself cheerfully in the hope entertained by the hon. the Law Member and adjourn the House till 11 o'clock to-morrow.

" I have stated that to-morrow will be an official day and business will be circulated at once in supersession of the agenda paper already circulated."

The House adjourned at 5-3 p.m. to meet again the next day.

R. V. KRISHNA AYYAR,
Secretary to the Legislative Council.

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